

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

27120

FILE: B-209166.2

DATE: December 27, 1983

MATTER OF: Control Data Corporation

DIGEST:

1. Resource Consumption Routine (RCR) that does not measure and print out all resource elements which company's billing algorithm uses to compute charges to government does not meet solicitation requirement for RCR that requires output of each unique resource element for which a charge is made.
2. Contracting agency met requirement that meaningful discussions be held with all offerors in competitive range where it asked questions concerning deficiency in protester's proposal and it permitted protester to revise its proposal to correct deficiency.

Control Data Corporation (CDC) protests the elimination of its proposal from the competitive range in a procurement for teleprocessing services and technical assistance/analyst services under request for proposals (RFP) No. IRS 82-87, issued by the Department of the Treasury, Internal Revenue Service (IRS).

We deny the protest.

IRS initially found CDC's proposal, including passing a benchmark, technically acceptable and CDC was asked to submit a best and final offer. Approximately 1 month later, IRS informed CDC that IRS was having difficulty validating CDC's billing algorithm with CDC's Resource Consumption Routine (RCR).^{1/} After several weeks of

^{1/} A billing algorithm is a mathematical formula which computes the computer resource units used for an activity. Typically, the resources include such items as central processor seconds, central processor memory and input/output activity. The number of resource units used for an activity is multiplied by the contractually established billing rate to calculate the charge for the activity. A Resource Consumption Routine is a program which permits the user to audit the charges made for computer resources used.

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intermittent meetings between IRS and CDC, IRS required CDC to rerun a segment of the benchmark to show that its RCR met the solicitation requirements with regard to algorithm validation. CDC was unable to satisfy IRS within the time-frame required by IRS. IRS then removed CDC from the competition. IRS subsequently awarded a contract to Boeing Computer Services.

CDC argues that its proposal in the form initially found to be technically acceptable met the RCR and algorithm requirements of the solicitation. In the alternative, CDC contends that, even if its proposal did not meet those requirements, IRS breached its legal duty to clearly inform CDC of the deficiency in its proposal in sufficient time to permit CDC to correct the deficiency.

The solicitation contained the following relevant clauses:

"E.19 RESOURCE CONSUMPTION MEASUREMENT
ROUTINE

"(a) A routine shall be provided to the Government which will record the Elapsed Time and all computer resources consumed during the execution of any program for which it is applied. The purposes of this routine are to provide the Government with a tool for use in auditing system performance and costs, and in optimizing application software during development.

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". . . The routine will measure only the program to which it is applied and will provide output to the calling program which includes specifically and separately all unique resource elements for which a charge is made. Any elements that are bundled to produce a compound billing unit of any kind, shall be quantified separately (unbundled).

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"(b) The resource consumption routine shall be capable of: (1) displaying (as part of the terminal/batch printout) the elapsed time and all resources consumed (each element separately) by a program to which the routine is applied.

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"(e) The offeror's resource consumption routine shall measure, for each benchmark program, the elapsed time utilized by that program and the types and quantities of all resources consumed by that program for which any charge is made. If any or all of the specified resource elements consumed are bundled, this routine shall identify and quantify the bundled elements in an unbundled form (each element separately) as well as those elements which are not part of the bundled elements(s).

"I.2 EVALUATION CRITERIA

"a. Cost will be evaluated to determine whether or not:

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(4) The offeror has provided his complete billing algorithm for TSP services and hourly rates for each level of support services (TA/AS).

"I.3 PRICING TABLES - INSTRUCTIONS

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"c. The offeror shall provide, as a part of its proposal, the billing algorithm it will use to complete invoices submitted for payment under any resulting contract. Each and every element of the algorithm shall be defined and explained in sufficient detail to permit/enable the Government to audit the cost tables and to monitor prices throughout the system life of this contract. Include an explanation of how each element is measured, collected, and charged for any resources consumed."

The record in this case includes sensitive material, proprietary to both offerors, which is directly relevant to the issues in the case. Therefore, our discussion of the

issues must necessarily be circumspect. However, we have carefully examined all of the relevant material in reaching our decision.

After examining CDC's benchmark output in conjunction with its billing algorithm, the IRS ultimately found CDC's proposal unacceptable because CDC's RCR does not separately quantify and display a unique resource element that its billing algorithm uses in calculating the system resource units consumed. Consequently, the IRS could not validate the billing algorithm. According to the IRS, the above-quoted solicitation language clearly requires that the RCR separately quantify and display each unique resource that impacts on the charge to the government. The IRS asserts that, without that information, the government cannot use the RCR to audit costs as the solicitation requires.

IRS relies on Compuserve Data Systems, Inc. v. Freeman, 498 F. Supp. 1316 (1980), and Compuserve Data Systems, Inc., 60 Comp. Gen. 468 (1981), 81-1 CPD 374, in support of its position. According to IRS, the solicitation involved in those cases included an almost identical RCR requirement. Both the district court and GAO found that the Compuserve RCR did not meet the requirement because it did not calculate or display two separate resource elements that were bundled together, but merely provided the bundled figures. The decisions concluded that the government could not adequately audit the charges assessed it for the bundled resources.

CDC contends that its proposed RCR meets the requirements set forth in the solicitation for the following reasons.

CDC argues that the RFP does not explicitly link the RCR output to evaluating the billing algorithm. CDC also contends that the RFP does not require the RCR to print out or display the resource elements consumed by a program. In this regard, CDC points out the differences between the RCR language in the solicitation in Compuserve, supra, and the language here. CDC asserts that the RCR provisions in the Compuserve RFP uses the words "display" and "printout" "on several occasions and specifically states the "printout must display" resource elements consumed, while the RCR language here does not use such language. Consequently,

IRS's reliance on Compuserve as precedent for the display or printout requirement is misplaced, according to the protester.

CDC admits that its RCR does not separately measure one of the resources consumed, but argues that this is not relevant to the issue of whether its RCR meets the RFP requirements. CDC asserts that the unmeasured resource is not bundled with any other resource. Also, the RCR provides the total resource units consumed and the other resource elements that make up the total. Therefore, an average value for the unmeasured resource can be determined by using the billing algorithm formula and solving mathematically for the single unknown. In that way, costs can be audited. Additionally, CDC contends that the RCR provision requires output only for resource elements for which a charge is made. CDC argues that, since the element in question is not charged separately, no output is required.

CDC distinguishes this situation from that present in Compuserve. In Compuserve, two resource elements were bundled and no separate information was provided for them. Since there were two unknowns, the values of the two bundled resources could not be determined mathematically. Consequently, the government could not audit its costs. CDC asserts that here there is only one unknown and it is not bundled with any other resource. Therefore, Compuserve has no precedential value for this situation.

CDC also argues that, because of the efficient and sophisticated way in which the resource in question is allocated, it is virtually impossible to measure and display actual consumption of the resource in any usable form. According to CDC, any usable RCR display of that resource's consumption would be an average figure no different than the figure that can be mathematically calculated from its proposed RCR output.

Additionally, CDC contends that certain actions by the IRS confirm CDC's interpretation of the RCR requirement and the acceptability of its proposal. According to CDC, IRS personnel suggested the use of its proposed RCR program prior to the first benchmark with full knowledge of the resources printed by the program. Then, after IRS saw the benchmark results, including the RCR printout, IRS declared CDC's proposal technically acceptable.

CDC also argues that the RCR requirement was at least ambiguous and that the ambiguity was enhanced by IRS action. According to CDC, the RCR requirement contemplates implementation at the program level while the benchmark required RCR implementation at the step level, a subprogram level. This was reinforced when an IRS technical representative orally confirmed that the benchmark required RCR implementation at the step level. According to CDC, this ambiguity caused it problems in correcting the alleged deficiency in its proposal.

As an adjunct to this argument, CDC asserts that a statement made by an IRS representative at the conference held on this protest indicated that Boeing's RCR was implemented at the program level. According to CDC, this shows that the IRS was aware that the RCR requirement was ambiguous and that IRS treated the offerors unequally in this regard.

The IRS contends that the plain language of the RCR requirement, as well as the stated purposes of the requirement, makes it clear that the RCR must measure and display consumption of each resource element which impacts on the charges made to the government. IRS points to the language requiring separate quantification of all unique resource elements, including an example referring to the very element which CDC's RCR does not separately quantify. IRS also points to the phrase "[t]he RCR shall be capable of: (1) displaying (as part of the terminal/batch printout) the elapsed time and all resources consumed (each element separately) by a program to which the routine is applied." Additionally, the IRS notes that the purpose of the RCR--to audit costs--requires that all resource elements be separately measured and displayed. The key RCR language and the purpose are identical to the language in the Compuserve RFP, asserts the IRS.

The IRS states unequivocally that CDC's proposed RCR does not satisfy the RFP requirements literally or functionally. IRS contends that CDC's proposed method for calculating the resource element that its RCR does not measure or print could result in the bundling of errors or algorithm changes with the nonmeasured resource element. That is because the method requires the government to accept the total resource units consumed as correct and then to work backwards by eliminating each known resource

element until only the nonmeasured element remains. The remaining value, however, could include any errors in the total. This would not permit the government to accurately audit costs.

IRS claims that its suggestion to CDC that it use its proposed RCR rather than a previous one was based only on the knowledge that the previous RCR did not measure or print any of the separate resource elements making up the total while the proposed one printed separate resource elements. The IRS asserts that it did not know, at that time, that the proposed RCR did not print all separate resource elements. Also, IRS claims that it did not know of the deficiency in CDC's RCR until after the declaration of technical acceptability.

Finally, the IRS contends that the RFP clearly requires the RCR to be implemented at the step level and that Boeing's RCR meets the requirements at that level. In any event, the IRS points out that CDC's RCR does not meet the requirement at any level.

We find that the RFP's RCR provision was clear in requiring all unique resource elements to be quantified and displayed and that CDC's proposed RCR did not meet that requirement either literally or functionally. Also, while the RFP did not explicitly state that the RCR would be used to verify the billing algorithm, that is clearly implied in both the language and the purpose of the RCR provision and is a reasonable use of the RCR.

The RCR provision states in several places that the RCR must "measure," "record" and "output" separately all resource elements consumed for which any charge is made. The provision also states that the RCR shall be capable of displaying that information as part of a printout. CDC's RCR does not measure, record, output or display one resource element. CDC's billing algorithm shows that CDC charges for that element. We find it clear that CDC's proposed RCR does not meet the literal requirements of the RFP.

We also find that CDC's proposed solution of solving mathematically for the element does not meet the functional requirements of the RCR. CDC has not rebutted the IRS statement that any errors or algorithm changes could be bundled with the unmeasured resource element, since it

would include anything remaining in the total resources consumed figure after all of the measured resources are accounted for. Consequently, IRS could not use the CDC RCR as an accurate tool for auditing costs.

In this regard, we think that the Compuserve cases are sufficiently similar in important respects to be of precedential value here. While the RCR provision in Compuserve is more explicit regarding the requirement for display of all elements, the RCR provision here is sufficiently clear in that regard. The language concerning the purpose of the RCR is nearly identical in both instances. Also, while Compuserve involved two unknowns and this case involves one, the broader principle, embodied in Compuserve, that measurement of all separate resource elements is necessary for an accurate audit of costs, is applicable here.

We find CDC's argument that IRS directed it to use its proposed RCR with knowledge that it did not print the element in question to be without merit. The letter in question advises CDC that the benchmark required its RCR before and after certain steps and that its RCR must provide unbundled resource components. It goes on to state that the RCR initially proposed by CDC shows only the bundled billing unit and asks that CDC provide a command that shows the unbundled resource consumption. IRS states that "[f]or example, it appears that your command '[deleted]' provides this information (See enclosure 2)." Enclosure 2 is a list of resources printed by that command. Our reading of this letter is that IRS was giving a general direction to use an RCR that unbundled all resources and was **providing** an example of a potential RCR. Also, IRS could not be charged with knowledge that the RCR would not display all resources for which CDC would charge. The enclosure listed the resources printed, but not all were clearly labeled as to what they represented. Additionally, since this occurred prior to best and final offers, the IRS could not be certain of the resource elements for which CDC would bill.

We find CDC's allegation that the RCR requirement was ambiguous to be both untimely and irrelevant. By CDC's own admission, it knew that the RCR routine was to be placed before and after certain benchmark steps when it received the benchmark package and when the IRS technical representative advised CDC concerning the benchmark. If CDC thought that the benchmark instruction regarding the RCR

was in conflict with the RCR provision's use of the term program, it was required to protest that within 10 working days of that time. 4 C.F.R. § 21.2(b)(2) (1983). Since it did not do so, the issue will not be considered. In any event, we fail to see its relevance, since CDC's RCR did not meet the requirements at either the step or program level.

Finally, in regard to CDC's contention that Boeing was permitted to meet the RCR requirements at the program level, we have examined Boeing's benchmark performance and are satisfied that Boeing's RCR meets the solicitation at the step level as well as the program level. We find this particularly instructive, since Boeing and CDC use the same hardware. Contrary to CDC's assertion that the efficient and sophisticated allocation of the resource in question makes implementation of the RCR in the manner required by IRS difficult or impossible, Boeing has, in fact, provided a solution.

The alternate position taken by CDC is that, assuming that its proposed RCR did not meet the IRS's requirements, the IRS did not conduct meaningful negotiations with CDC to alert it to the deficiency and did not give CDC an adequate opportunity to revise its proposal by correcting the deficiency. As part of this argument, CDC contends that IRS improperly conducted the final benchmark on a pass/fail basis.

We find that the negotiations here were legally sufficient judged by the standards set forth in our decisions. In that regard, we have held that, while negotiations must be "meaningful," the extent of discussions necessary to satisfy that requirement is a matter of judgment primarily for determination by procuring officials and is not subject to question by our Office unless shown to be clearly without a reasonable basis. Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255. Concerning the agency's duty to point out deficiencies in offerors' proposals, we have held that requests for clarifications or amplifications which lead offerors to areas of their proposals that are deficient are sufficient to put them on notice of the deficiencies. System Sciences Incorporated, B-205279, July 19, 1982, 82-2 CPD 53; Health Management Systems, *supra*; Serv-Air, Inc., 57 Comp. Gen. 827 (1978), 78-2 CPD 223.

The relevant chronology is as follows. On December 17, 1982, CDC performed the benchmark test and was formally advised by letter of January 25, 1983, that it had passed the benchmark and its proposal was technically acceptable. The letter also requested a best and final offer. The best and final offer was submitted on January 28, 1983, and included CDC's billing algorithm.

On March 2, 1983, a critical meeting took place between IRS and CDC representatives. The parties' accounts of the meeting are somewhat at odds. Both parties have submitted affidavits from their representatives concerning the meeting. According to the IRS, on March 1, 1983, the IRS contract specialist telephoned a CDC official and read him a list of cost-oriented items that would require clarification by CDC. A meeting was scheduled for March 2. On the morning of March 2, an IRS evaluator, in attempting to validate the CDC algorithm, discovered that the RCR did not print out a resource element that the algorithm used. The IRS contract specialist telephoned the CDC representative that morning and advised him of the problem and that it would be discussed at the meeting.

At the meeting, the dominant issue discussed was not the list of clarifications, but rather the RCR/algorithm problem. The IRS evaluator explained to the CDC representatives that she had been trying to verify the CDC algorithm by using the RCR printout from the benchmark. She stated that she could not identify anything on the printout that corresponded to a resource element used in the algorithm. She then asked the CDC representatives if the element was, in fact, printed out by the RCR. One of the CDC representatives answered that it was not. Then the IRS evaluator stated that CDC did not meet the requirements of RFP § E.19 for that reason. She then showed the representatives the provision; they studied it and said that they would consult with CDC technical staff and get back to IRS on the question. One of the representatives suggested that repeating the benchmark at any time would be an adequate check on the algorithm and that the algorithm would remain constant over the term of the contract. The IRS representatives said that solution would not satisfy the requirements of RFP § E.19. One of the CDC representatives said that the algorithm had an error in it and he would get back to IRS with a corrected version.

CDC's recollection of the March 2 meeting is substantially different regarding certain key points. According to CDC, the IRS said nothing in the March 1 telephone call about any RCR/algorithm problem or deficiency. Also, after the IRS evaluator asked about printing out the resource element in question and CDC's response that the best way to verify the algorithm is to rerun the benchmark, CDC states that the IRS evaluator accepted that alternative and was satisfied. CDC also states that IRS did not request, and CDC did not volunteer, the delivery of anything related to the RCR/algorithm issue. As objective evidence in support of its version of the meeting, CDC offered contemporaneous handwritten notes by one of its representatives present at the meeting that states "[name of IRS evaluator] satisfied." Additionally, CDC points out that IRS never followed up on the algorithm/RCR question in writing or orally until March 18 and the IRS evaluator attempted to rerun the CDC benchmark and met with CDC officials to attempt to verify the algorithm by hand calculation. CDC argues that these actions are consistent with its version of the March 2 meeting.

After the March 2 meeting, there were several more contacts between IRS and CDC personnel prior to the March 18 meeting. On March 3, a CDC representative delivered a corrected copy of the algorithm to IRS; there was no discussion. IRS again had difficulty validating the algorithm. On March 8, there was contact between IRS and CDC, again with varying interpretations. IRS states that it was a "casual encounter" and that the conversation addressed the algorithm validation requirement and IRS's need for a complete RCR in order to validate the algorithm. CDC says that it was contacted by IRS and advised that IRS was having difficulty validating the algorithm because the IRS analyst could not compare the RCR and algorithm because the algorithm did not give certain weighted factors necessary for the calculation.

CDC states that on March 9 its representative was visiting IRS on another matter and initiated contact with the IRS technical evaluator. The technical representative asked for further information on the algorithm which CDC

promised to deliver on March 11. IRS claims that it advised the CDC representative that the algorithm validation issue would not be dropped by the IRS. IRS also states that it asked the CDC representative if he would be checking the next algorithm submission with the benchmark RCR printout before submitting it to IRS and the CDC representative told IRS that there would not be sufficient time and that he was sure that IRS would let him know if there was a problem.

On March 11, CDC delivered what it characterizes as a fully expanded version of the first algorithm. Again, IRS could not validate the algorithm. IRS states that at this point it was concerned that "clarifications" were becoming "discussions" so it decided to reopen negotiations. This was done with all vendors in the competitive range, but was primarily for CDC's benefit, according to IRS.

On March 15, the IRS telephoned a CDC representative and stated that IRS still could not validate the algorithm and that a letter detailing this and reopening negotiations would be forthcoming.

CDC states that on March 16 it initiated a meeting with the IRS evaluator in order to show her "how to mathematically calculate the validity" of the algorithm and that the tone of the meeting was cooperative and excellent progress was being made. IRS remembers the meeting as occurring on March 17 and states that the algorithm validation attempt was unsuccessful because the algorithm was incomplete, as was the RCR information. IRS claims to have requested another version of the algorithm and to have telephoned CDC to set up an algorithm validation session.

The next meeting took place on March 18. The accounts of this meeting are basically in accord. Basically, CDC attempted to explain the role of the resource element not printed in CDC's billing and to give alternate methods of calculating that resource. The IRS handed a letter to CDC representatives which stated:

"We have reviewed the algorithm and have been unable to verify it. You have been verbally notified of our attempts, and have been provided several opportunities to verify it for us.

"Your firm's response to Section E paragraph E.19 and Section I, paragraphs I.2 and I.3 has not provided information in sufficient detail to permit the IRS to audit cost tables and to monitor prices throughout the systems life of any resultant contract."

The letter further advised CDC that it would be required to validate its algorithm by rerunning certain benchmark steps on March 23 from 9:30 a.m. to 1:00 p.m. and that session would be the final attempt at algorithm validation. If that attempt was unsuccessful, CDC's proposal would no longer be considered. Additionally, the IRS contracting officer verbally stated to CDC that its RCR must print out the "missing" resource element. According to CDC, it attempted to engage IRS in discussion to explain the problems inherent in compliance with this demand and to solicit IRS guidance on desired solutions, but IRS would not discuss the matter further.

CDC and IRS representatives met on March 21 and 22 at CDC's request. The record indicates that the tenor of both meetings was confrontational and that the meetings were not productive. CDC both asked for additional detail and direction on IRS's desired solution and insisted that IRS did not understand its own requirement which CDC claimed to have already fulfilled. CDC also requested an extension of time for the benchmark rerun. IRS refused to provide further guidance and stated that the RCR requirement was a functional requirement that each offeror must solve in its own way.

On March 23, CDC requested an extension of time to rerun the benchmark. IRS moved the deadline from 1 p.m. to 4 p.m. CDC was unable to complete the benchmark by the deadline. On March 25, CDC delivered to IRS a printout of the required benchmark steps which it had run at its own facility and which it claims meets IRS's requirements. IRS accepted it, but refused to consider it, and by letter of March 31 advised CDC that its proposal would no longer be considered.

CDC contends that IRS should have known of the alleged deficiency in CDC's proposal when CDC performed the benchmark in December of 1982. CDC characterizes the RCR requirement as a part of the technical evaluation that was performed at that time. The time delay caused by IRS's

negligence in this regard prejudiced CDC because it could have easily provided a compliant RCR with several months' time.

CDC argues that the March 2 meeting did not sufficiently apprise it of the alleged deficiency because the RCR/algorithm issue was not reduced to writing at that time or later; CDC reasonably believed that the IRS was satisfied with the answer CDC provided at the meeting, and IRS did not revive the issue until March 18.

CDC contends that, even after the letter of March 18 and meetings of March 18, 21 and 22, it was not certain of IRS's requirement because IRS would not discuss the problem in any detail. CDC also argues that by March 18 it was nearly impossible to meet the March 23 benchmark performance deadline.

CDC asserts that IRS's actions were legally deficient in several respects. CDC feels that IRS did not conduct meaningful discussions as required by the Federal Procurement Regulations and by GAO decisions. In that regard, CDC argues that IRS did not place CDC on clear notice of the alleged deficiency in its proposal and did not afford CDC sufficient time to revise its proposal. CDC also contends that IRS improperly conducted the benchmark rerun on a pass/fail basis while GAO decisions require multiple benchmark attempts. CDC also argues that, because its price was significantly lower than the awardee's price and the awardee was the only offeror remaining in the competitive range once CDC was removed, IRS should not have removed it so precipitously. CDC argues further that, because CDC and Boeing were implementing the RCR differently (program v. subprogram levels), IRS was required to resolve the differing implementations. Finally, regarding the differing versions of the events in this case, CDC charges IRS with "historical revisionism."

IRS contends that, while the RCR requirement is partly technical, IRS could not discover the deficiency in CDC's proposal until it began to perform the cost evaluation and compared CDC's algorithm with its benchmark RCR printout. IRS argues that, in any event, CDC was clearly on notice of the deficiency on March 2 and understood it at that time. IRS characterizes the time from March 2 to March 23 as more than sufficient time to correct the deficiency. However, according to IRS, instead of correcting the deficiency, CDC

persisted in attempting to convince IRS that IRS did not require the resource element to be measured and printed out by the RCR. IRS states that CDC's corporate headquarters appeared to be resistant to any changes in its operating system that would be required to meet the RCR requirements.

Concerning the benchmark, IRS does not characterize it as a pass/fail requirement, but rather as the final opportunity of many for CDC to show that its RCR complied with IRS's requirement.

IRS also asserts that the deficiency in CDC's RCR was so great as to require extensive software rewriting, which might be viewed as a substantial proposal revision. IRS argues that in such a case it was not required to conduct discussions at all with CDC and could have rejected its proposal summarily and that, by holding discussions and permitting CDC to revise its proposal, IRS went well beyond what the law requires.

Finally, IRS contends that further extension of the discussions would not have made any difference because the RCR proposed by CDC in its March 25 submission and described during the course of the protest continued to fail to meet IRS's RCR requirement.

We conclude that the question asked on March 2 by the IRS evaluator concerning whether CDC's RCR printed out a particular resource element in the context of the algorithm verification problem and in conjunction with the language of the RFP RCR provisions was clearly sufficient to put CDC on notice of the deficiency in its RCR. As we stated above, the two parties have filed affidavits with different versions of this meeting, with CDC claiming that IRS was satisfied with the alternative solution offered by CDC and with IRS claiming that it never suggested that it was satisfied. We have held that, when the only evidence in the record on an issue is the conflicting statements of the protester and the contracting agency, the protester has not carried the burden of proving its case on that issue. Essex Electro Engineers, Inc., B-206012.3, October 4, 1982, 82-2 CPD 307. That is the situation in the present case. The "objective evidence" offered by CDC in support of its position is not persuasive. The CDC representatives' contemporaneous note to the effect that IRS was "satisfied" is nothing more than his opinion. The fact that the IRS evaluator attempted to rerun the benchmark and verify the algorithm by hand calculation does not necessarily show that IRS was satisfied with those suggestions, but could

just as well show a good-faith attempt to evaluate those suggestions, even though IRS did not believe that they were sufficient. Additionally, the contacts between IRS and CDC on March 8 and 9, as reported by IRS, in context of the RFP RCR provision and the March 2 meeting should have confirmed that IRS was not satisfied with CDC's solution. Additionally, CDC's submission of four different versions of the algorithm due to IRS inability to verify each version should have made it clear that the problem was not being solved by CDC's proposed solution.

Concerning the allegation of "historical revisionism," we must point out that CDC's memory concerning the meetings is not as clear as it represents. An affidavit by a key CDC representative states that IRS did not contact CDC between March 2 and March 15 as evidence that IRS was not conducting meaningful discussions. However, an earlier CDC protest submission states that IRS contacted CDC on March 8.

We find that from March 2 to March 23 was sufficient time for CDC to correct the deficiency in its proposal. This is consistent with the time considered reasonable in Compuserve, supra, and with CDC's own estimate of 5 days as the time necessary to implement a solution. Therefore, we will not consider whether IRS should have discovered the deficiency prior to March 2, since that is irrelevant.

Regarding CDC's argument that IRS would not supply it with the desired solution, we find that the RFP RCR provision and IRS statements concerning the deficiency were sufficient to permit CDC to devise a solution. The requirement was stated in functional terms and it is the responsibility of each offeror to provide its own solution to satisfy the requirement. The government is not required to select among possible solutions that an offeror might propose. It appears that CDC understood what IRS wanted, but was unwilling to spend the resources necessary to provide a possible compliant solution without some prior IRS approval. Such prior approval is neither legally necessary nor desirable. The government is not required to continue with successive rounds of discussions to lead a technically unacceptable offeror to technical acceptability. See, e.g., Serv-Air, Inc., supra.

While we recognize that our decisions caution against pass/fail benchmarks, we do not view the March 23 benchmark in that light. CDC had already failed to show the required information in its December 17 benchmark even though IRS

did not detect the problem until March 2. Therefore, the March 23 benchmark was the second attempt. Also, the benchmark was the final opportunity in a series of attempts by CDC to meet the RCR requirements and benchmarks are considered to be a part of the evaluation and discussion process. See NBI, Inc., B-201853.3, August 9, 1982, 82-2 CPD 114.

CDC also argues that a decision to exclude an offeror from the competitive range should be carefully scrutinized when the result is that only one offeror is in the competitive range. The GAO decisions that hold that, however, are decisions to initially exclude an offeror from the competitive range--that is, to conduct no discussions with the offeror. See, e.g., Dynalelectron Corporation, B-185027, September 26, 1976, 76-2 CPD 267; Comten-Comress, B-183379, June 30, 1975, 75-1 CPD 400. In this case, CDC was included in the competitive range and was given the opportunity to correct its deficiencies through discussions. Only after it failed, was its proposal rejected. We find this to be consistent with our decisions. In any event, we think that IRS's actions are reasonable even if closely scrutinized.

Finally, concerning CDC's argument that, when offerors have differing implementations of an RFP requirement, the differences must be resolved through discussions, we found above that Boeing was required to implement its RCP on the subprogram level just as CDC was required to do.

Protest denied.

Larry D. Van Cleave
for Comptroller General
of the United States